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Responsibility of international organizations

Comments and observations received from Governments

Addendum

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I. Introduction

An additional written reply, containing comments and observations on the draft articles on the responsibility of international organizations, adopted on first reading by the International Law Commission at its sixty-first session, in 2009 (A/64/10, para. 50), was received from Chile (9 May 2011).

II. Comments and observations received from Governments

A. General comments

Chile

[Original: Spanish]

International organizations are a key component of the current system of international law, in that they contribute actively to the preservation of international peace and security and have a positive impact in the different spheres in which they operate. For this reason, a body of norms that suitably and coherently regulates their international responsibility seems both necessary and unavoidable.

It is appropriate that the draft articles are based, in terms of structure and content, on the articles on the responsibility of States for internationally wrongful acts, and Chile concurs with the decision of the Commission that the distinctive nature of international organizations necessitates the drafting of a separate body of norms that is specific to them.

B. Specific comments on the draft articles

Part one

Introduction

1. Draft article 1

Scope of the present draft articles

Chile

[Original: Spanish]

Chile agrees with the general concept expressed in paragraph (5) of the commentary, to the effect that responsibility is linked with a breach of an international obligation.

Part two

The internationally wrongful act of an international organization

Chapter I

General principles

2. Draft article 4

Elements of an internationally wrongful act of an international organization

Chile

[Original: Spanish]

The Government of Chile believes that the actions of international organizations in a territory subject to the jurisdiction of a given State might be characterized as lawful under the law of that territory. As a result, it is still useful to include a provision similar to article 3 of the articles on State responsibility.

Chapter II

Attribution of conduct to an international organization

3. Draft article 8

Conduct acknowledged and adopted by an international organization as its own

Chile

[Original: Spanish]

Paragraph (5) of the commentary states that the rules of the organization govern the issue of which organ would be competent to acknowledge and adopt a conduct as its own. It is very possible, however, that the rules of the organization will not help in all cases. The rules of the organization will probably identify the functions of each organ and which organs have the power to bind the organization in international instruments, but the organization's constituent instrument probably will not specify which organ is to take responsibility for the conduct of third parties. The rules on the powers of the various organs to conclude agreements or otherwise bind the organization could not be applied by analogy to cases involving the assumption of responsibility for the conduct of third parties. The organ acknowledging such conduct may occupy a middle rank in the organization's hierarchy, and a decision needs to be taken as to whether statements by such organs can bind the organization's responsibility or whether only its management organs can do so.

Chapter V

Circumstances precluding wrongfulness

4. Draft article 21

Countermeasures

Chile

[Original: Spanish]

[See the comment under article 51, below].

Part four

The implementation of the international responsibility of an international organization

Chapter II

Countermeasures

5. General comments

Chile

[Original: Spanish]

Chile is in favour of the inclusion of a chapter on countermeasures, since there is no reason why an international organization which breaches an international obligation should be exempted from the adoption of countermeasures by an injured State or international organization to induce it to comply with its obligations.

6. Draft article 50

Object and limits of countermeasures

Chile

[Original: Spanish]

Countermeasures need to be restricted so as not to prejudice the exercise by international organizations of their functional competence. This issue appears to be resolved by draft article 50, paragraph 4. However, defining the restrictions on countermeasures on the basis of such broad, imprecise wording may prove very difficult, rendering the application of countermeasures unworkable in practice.

7. Draft article 51
Countermeasures by members of an international organization

Chile

[Original: Spanish]

As to whether an injured member of a responsible international organization may take countermeasures against that organization, Chile believes that this should, in principle, be possible, without prejudice to the application of the rules of the organization as *lex specialis*. Accordingly, it is in agreement with this provision and with the requirements established in draft article 51.

When the rules of the organization do not, explicitly or implicitly, regulate the question of countermeasures in relations between an international organization and its members, the general rule should be to permit the imposition of such measures. Accordingly, draft article 51 should be drafted positively in order to state more clearly the general rule applicable in cases where there are no rules of the organization that expressly decide the application of countermeasures. The same comment applies to article 21.
